No. 79-2006

NOV

# In the Supreme Court of the United States

OCTOBER TERM, 1980

---

LLOYD BARRENTINE, ET AL., PETITIONERS

*v.*

ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.

---

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT*

---

## BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

---


WADE H. MCCREE, JR.
*Solicitor General*

KENNETH S. GELLER
*Deputy Solicitor General*

BARBARA E. ETKIND
*Assistant to the Solicitor General*

*Department of Justice*
*Washington, D.C. 20530*
*(202) 633-2217*

CARIN ANN CLAUSS
*Solicitor of Labor*

DONALD S. SHIRE
*Associate Solicitor*

LOIS G. WILLIAMS
*Deputy Associate Solicitor*

MARY-HELEN MAUTNER
MARY ANN BERNARD
*Attorneys*
*Department of Labor*
*Washington, D.C. 20210*

# In the Supreme Court of the United States

OCTOBER TERM, 1980

---

No. 79-2006

LLOYD BARRENTINE, ET AL., PETITIONERS

*v.*

ARKANSAS-BEST FREIGHT SYSTEM, INC., ET AL.

---

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT*

---

## BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

---

### QUESTION PRESENTED

Whether an employee's submission of a contractual wage claim to a grievance committee precludes the employee from bringing an action under the Fair Labor Standards Act based on the same events.

## TABLE OF CONTENTS


| | Page |
|---|---|
| Interest of the United States | 1 |
| Statement | 1 |
| Summary of argument | 5 |
| Argument | 7 |
| An employee does not waive his right to bring suit under the Fair Labor Standards Act for unpaid wages merely by submitting a contractual claim based on the same facts to a grievance committee under a collective bargaining agreement | 7 |
| A. The FLSA's enforcement scheme makes clear that the courts are the appropriate forum for determining the rights conferred by the statute | 8 |
| B. The FLSA and collective bargaining agreements provide legally distinct rights that are properly enforceable in different forums | 16 |
| C. Permitting judicial trials *de novo* on FLSA claims would not diminish the federal policy favoring arbitration of labor disputes | 25 |
| Conclusion | 29 |


## TABLE OF AUTHORITIES

Cases:


| | |
|---|---|
| *Alexander* v. *Gardner-Denver Co.*, 415 U.S. 36 | *passim* |
| *Anderson* v. *Mt. Clemens Pottery Co.*, 328 U.S. 680 | 14 |
| *Bernhardt* v. *Polygraphic Co.*, 350 U.S. 198 | 22 |
| *Brooklyn Savings Bank* v. *O'Neil*, 324 U.S. 697 | 17, 26 |
| *Dunlop* v. *City Electric, Inc.*, 527 F.2d 394 | 19 |
| *Employees* v. *Department of Public Health & Welfare of Missouri*, 411 U.S. 279 | 10 |




PREVIOUS PAGE WAS BLANK

Cases—Continued — Page

*Griggs* v. *Duke Power Co.*, 401 U.S. 424 ..... 14
*Hodgson* v. *Miller Brewing Co.*, 457 F.2d 221 ..... 12
*Hodgson* v. *Rickey Fashions, Inc.*, 434 F.2d 1261.. 12
*Jewell Ridge Coal Corp.* v. *Local No. 6167*, 325 U.S. 161 ..... 17, 19
*Mitchell* v. *DeMario Jewelry, Inc.*, 361 U.S. 288..11, 12, 26
*Mitchell* v. *Mitchell Truck Line, Inc.*, 286 F.2d 721 ..... 19
*Mitchell* v. *Stewart Brothers Construction Co.*, 184 F. Supp. 886 ..... 19
*Mohasco Corp.* v. *Silver*, No. 79-616 (June 23, 1980) ..... 9
*Overnight Motor Transportation Co.* v. *Missel*, 316 U.S. 572 .....12, 21, 26
*Satterwhite* v. *United Parcel Service, Inc.*, 496 F.2d 448, cert. denied, 419 U.S. 1079.....10, 13, 14, 20, 21, 25, 26
*Steiner* v. *Mitchell*, 350 U.S. 247 .....15, 17, 19
*Teamsters* v. *United States*, 431 U.S. 324 ..... 14
*Tennessee Coal, Iron & R.R.* v. *Muscoda Local No. 123*, 321 U.S. 590 ..... 17, 19
*Textile Workers Union of America* v. *Lincoln Mills*, 353 U.S. 448 ..... 25
*U.S. Bulk Carriers, Inc.* v. *Arguelles*, 400 U.S. 351.. 20
*United Steelworkers of America* v. *American Manufacturing Co.*, 363 U.S. 564 ..... 25
*United Steelworkers of America* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 .....18, 22, 25
*United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574 ..... 25
*Vaca* v. *Sipes*, 386 U.S. 171 ..... 3
*Walling* v. *Helmerich & Payne*, 323 U.S. 37 ..... 21

Statutes:

Civil Rights Act of 1964, Title VII, 42 U.S.C. 2000e *et seq.* ..... 7
42 U.S.C. 2000e-2 ..... 20
42 U.S.C. 2000e-2(h) ..... 14
42 U.S.C. 2000e-5 ..... 9

Statutes—Continued Page

Fair Labor Standards Act, 29 U.S.C. 201 *et seq.*..... 1

29 U.S.C. 206 ..... 3, 17
29 U.S.C. 207 ..... 17, 21
29 U.S.C. 216(a) ..... 9
29 U.S.C. 216(b) .....1, 9, 11, 13, 23, 24
29 U.S.C. 216(c) .....1, 9, 10
29 U.S.C. 217 .....9, 10, 11
29 U.S.C. 218 ..... 13

Portal-to-Portal Act of 1947, 29 U.S.C. 251 *et seq.*.. 11, 13

29 U.S.C. 251(a) ..... 15
29 U.S.C. 251(b) ..... 13, 15
29 U.S.C. 254 ..... 15
29 U.S.C. 255(a) ..... 9, 23
29 U.S.C. 258 ..... 13
29 U.S.C. 259 ..... 13
29 U.S.C. 260 ..... 11, 23

52 Stat. 1069 ..... 10, 24
63 Stat. 919-920 ..... 11
75 Stat. 74 ..... 11
88 Stat. 73 ..... 11

Miscellaneous:

Azoff, *Joint Committees as an Alternative Form of Arbitration Under the NLRA*, 47 Tul. L. Rev. 325 (1973) ..... 24

*Fair Labor Standards Act of 1937: Joint Hearings on S. 2475 and H.R. 7200 Before the Senate Comm. on Education and Labor and the House Comm. on Labor*, 75th Cong., 1st Sess. (1937).. 20

Feller, *A General Theory of the Collective Bargaining Agreement*, 61 Calif. L. Rev. 663 (1973) ..... 23

H.R. Rep. No. 71, 80th Cong., 1st Sess. (1947)..... 12, 14

Jalet, *Judicial Review of Arbitration: The Judicial Attitude*, 45 Cornell L. Q. 519 (1960) ..... 22

Note, *Judicial Review of Arbitration Awards on the Merits*, 63 Harv. L. Rev. 681 (1950) ..... 22

S. Rep. No. 48, 80th Cong., 1st Sess. (1947) ..... 24

Miscellaneous—Continued

Page

S. Rep. No. 145, 87th Cong., 1st Sess. (1961) ..... 11
United States Department of Labor, *Minimum Wage and Maximum Hours Standards Under the Fair Labor Standards Act* (1979) ..... 12

## INTEREST OF THE UNITED STATES

The Secretary of Labor is empowered to enforce the provisions of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. 201 *et seq.*, by means of suits for injunctive relief and damages. 29 U.S.C. 216(c), 217. As an alternative to enforcement by the Secretary, Congress has authorized "affected" employees to bring private actions in any federal or state court of competent jurisdiction. 29 U.S.C. 216(b). Private FLSA plaintiffs may recover back wages, liquidated damages, reasonable attorney's fees and costs. *Ibid.*

Because the Secretary cannot oversee the pay practices of every employer, he depends in substantial measure on the enforcement efforts of private parties. Any restriction on the ability of affected employees fully to pursue their statutory rights thus has a significant negative impact on the enforcement of the Act.

The court of appeals' decision in this case weakens the private enforcement provisions of the Act by barring private FLSA actions by employees who have submitted a collective bargaining agreement claim based on the same facts to a grievance committee. As the present case illustrates, the court's refusal to entertain an FLSA claim in these circumstances may result in the retention of pay practices that are in apparent violation of the Act. The United States therefore has a substantial interest in the question presented by this case.

## STATEMENT

Respondent Arkansas-Best Freight System, Inc. (ABF), an interstate motor carrier of freight, does not pay its drivers for the time they spend checking their vehicles for violations of Department of

Transportation safety regulations and driving them to a repair facility in those instances in which violations are found. Rather, it has instituted the following procedure: Upon arriving at the terminal to begin a trip, an ABF driver "punches in" on a time clock and performs certain preliminary office functions, for which he is paid at non-driving time rates. After the driver completes this preliminary work, he "punches out," locates his vehicle, and makes the required pre-trip safety inspection of the vehicle. If he finds no defects, he proceeds on his trip, for which he is paid at the driving time rate. If, however, the driver discovers a defect, he is required to take the vehicle to a repair facility, which is owned by ABF and located on its premises, where the driver "punches in" on a second clock. In that event, the driver is not paid for the time between his "punch-out" and his second "punch-in"; his paid time recommences with the time spent on repairs. Thus, although the driver is paid for the time spent waiting for the vehicle to be repaired, he is not paid for his prior time spent inspecting the vehicle and driving it to the repair facility (Pet. App. 18a).

Petitioner Lloyd Barrentine and another ABF driver, J. N. Scates,[1] filed several grievances (see, *e.g.*, J.A. 19-21; R. 81)[2] under the collective bargaining agreement between ABF and respondent Local 878 of the International Brotherhood of Teamsters, Chauffeurs and Warehousemen (the Union), claiming back wages for the uncompensated inspec-

---

[1] Although Scates was initially a plaintiff in this case, he recently was elected an officer of Local 878 and did not join in the petition for a writ of certiorari.

[2] "R." refers to the record in the district court.

tion and driving time. The drivers relied on Article 50 of the Agreement, which required ABF to pay its employees "for all time worked by them in the service of the employer" (Pet. App. 17a). The joint labor-management committee that heard the grievances denied recovery without stating its reasons for doing so (see, *e.g.*, J.A. 22; R. 95).

The two grievants and six other ABF drivers thereupon brought this action in the United States District Court for the Eastern District of Arkansas.[3] The complaint alleged that ABF had violated the Fair Labor Standards Act (29 U.S.C. 206) by refusing to compensate the drivers for the time spent inspecting their vehicles and transporting them to the repair facility when repairs were required (Count I) and that the Union and its president, respondent A. J. Pickering, had breached their duty of fair representation (see *Vaca* v. *Sipes*, 386 U.S. 171 (1967)) by failing to process the drivers' grievances (Count II (J.A. 3-8).

---

[3] Named as plaintiffs, along with petitioner Barrentine and Scates, were petitioners Clyde Edwards, Cleo Keeney, Maxie Blanton, Johnny Robinson, Charley Deaton, H.E. Mitchell and L.R. Young. Prior to trial, the complaint was dismissed with prejudice as to plaintiffs Robinson, Young and Edwards on the ground of their failure to answer interrogatories.

Although only petitioner Barrentine and Scates had filed grievances, the district court rejected respondents' claim that the other employees could not proceed in the case since they had not exhausted their contractual remedies. The court explained that it would have been a futile gesture for the remaining employees to have filed grievances and gone to arbitration in light of their knowledge of the actions that the grievance committee had taken in the cases of Barrentine and Scates. Accordingly, the court "treat[ed] the case as though each of the named plaintiffs had actually filed grievances which were considered and denied" (Pet. App. 6a).

The district court addressed only the fair representation claim. It recognized (Pet. App. 4a) that the collective bargaining agreement, read literally, would require compensation for the time in question, since "[t]here is no question that the driver when [checking the vehicle] is on the employer's business; at least, no question in my mind." Nevertheless, it deferred to the grievance committee's decision that "this time was not spent in the service of the employer within the meaning of the contract" (*id.* at 11a). The court surmised that there probably was a "side deal" between the Union and ABF in regard to the subject of the drivers' dispute and held that such an arrangement was not improper because the parties could by mutual consent "fill in the gaps" in the collective bargaining agreement (*id.* at 8a-9a). The court also concluded that, even if the "side deal" were somehow improper, there was "no evidence that the existence of a side agreement had anything to do with the way these grievances were decided by the Committee" (*id.* at 9a).

The court of appeals affirmed (Pet. App. 14a-31a). The court of appeals agreed that the literal terms of the collective bargaining agreement appeared to cover the disputed time (*id.* at 21a), but it approved of the district court's deferral to the decisions of the grievance committee and rejection of the fair representation claim (*id.* at 29a-30a). The court of appeals also addressed petitioners' FLSA claims, holding (*id.* at 23a-26a) that the employees' prior submission of their contract claims to arbitration barred them from asserting their statutory wage claims in federal court. The court distinguished *Alexander* v. *Gardner-Denver Co.*, 415 U.S. 36 (1974), on the ground that the matter taken to arbitration in that case involved race discrimination and "the right of an employee to be free from such discrimination may

well be thought to stand in more need of protection than conventional arbitration of a simple wage dispute may provide" (Pet. App. 25a).

Judge Heaney dissented. In his view, "the Supreme Court's conclusions in *Alexander* v. *Gardner-Denver Co.* * * * regarding Title VII claims apply with equal force to claims arising under FLSA * * *" (Pet. App. 30a).

## SUMMARY OF ARGUMENT

In *Alexander* v. *Gardner-Denver Co.*, 415 U.S. 36 (1974), the Court held that an employee's submission to arbitration of a contractual claim based on the non-discrimination provisions of a collective bargaining agreement does not bar him from thereafter bringing a Title VII action in federal court based on the same facts. For similar reasons, an employee's submission of a contractual wage claim to grievance-arbitration should not preclude a subsequent suit under the Fair Labor Standards Act.

A. The plain language of the FLSA provides aggrieved employees with immediate, unrestricted access to the courts. Moreover, the FLSA, like Title VII, relies on the employee's private right of action as an essential means of obtaining judicial enforcement of the statutory scheme. The FLSA, like Title VII, contains no suggestion that this private right of action may be precluded by an employee's prior submission to arbitration of a contractual claim based on the same events. On the contrary, the fact that each statute itself affords alternative forums indicates that the statutes are intended to *augment* whatever other remedies may be available to the employee.

Petitioners satisfied all the statutory requisites for bringing a civil action under the FLSA. There is no statutory basis for the dismissal of their action by the court of appeals.

B. In *Gardner-Denver*, this Court held that Title VII rights are independent of whatever rights may be provided by a collective bargaining agreement. Moreover, because arbitrators are bound by the terms of the collective bargaining agreement in the event of a conflict between the contract and the statute, the Court held that Title VII plaintiffs must be permitted to sue in court notwithstanding a prior submission to arbitration of a contractual claim based on the same facts.

FLSA rights also are independent of and distinct from any rights that may be contained in a collective bargaining agreement. Like Title VII rights, these statutory rights may not be waived prospectively, except as part of a voluntary settlement of a bona fide dispute. If submission of a contractual wage claim to arbitration were held to preclude a subsequent FLSA action in court, the merits of the FLSA claim might never be considered, violations of the Act might not be corrected, and collective bargaining agreements would be permitted to shield employers from liability under the Act. This result would frustrate congressional intent in passing the FLSA and would contravene prior decisions of this Court.

Furthermore, arbitration is an inadequate forum for the vindication of the important economic rights guaranteed by the FLSA. The role of the arbitrator is merely to interpret and apply the terms of the collective bargaining agreement; in doing so he rarely relies on public law concepts, and he has no authority to decide purely statutory matters. In addition, the arbitrator, who is typically not trained in the law, has no special competence or experience in the adjudication of statutory questions. The employee's wage claim may not be adequately presented by his union. And the grievance-arbitration process does not ensure careful, accurate fact-finding of a

kind necessary for the proper determination of statutory claims.

C. Permitting an employee to bring an FLSA action in court after submitting a contractual wage claim to arbitration will not detract from the important federal policy in favor of resolving labor disputes through arbitration. Indeed, a contrary rule would more likely have that result. If submission of a contractual claim to arbitration were to foreclose a subsequent FLSA action, an employee well might eschew the grievance procedure entirely in favor of bringing suit on his statutory claim. We submit, therefore, that the federal policy favoring arbitration and federal wages and hours policy are best accommodated by permitting employees to pursue fully both their remedies under the grievance-arbitration provisions of the collective bargaining agreement and their remedies under the FLSA.

## ARGUMENT

### AN EMPLOYEE DOES NOT WAIVE HIS RIGHT TO BRING SUIT UNDER THE FAIR LABOR STANDARDS ACT FOR UNPAID WAGES MERELY BY SUBMITTING A CONTRACTUAL CLAIM BASED ON THE SAME FACTS TO A GRIEVANCE COMMITTEE UNDER A COLLECTIVE BARGAINING AGREEMENT

In *Alexander* v. *Gardner-Denver Co.*, 415 U.S. 36 (1974), this Court held that an employee's right to a trial de novo in federal court under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, was not precluded by the prior submission of his claim to final arbitration under the nondiscrimination clause of a collective bargaining agreement. In so holding, the Court relied on the statute's enforcement scheme (including its dependence on the private right of action), the independent and distinct nature of

statutory and contractual causes of action, and the fact that permitting a judicial trial de novo on the statutory claim would not detract from the federal policy of settling labor disputes by arbitration. Because each of these factors is also applicable to an employee's claim under the Fair Labor Standards Act, the employee should be equally free to pursue his statutory wage claim in the courts, regardless of his prior submission to arbitration of a contractual dispute based on the same events.

### A. The FLSA's Enforcement Scheme Makes Clear That The Courts Are The Appropriate Forum For Determining The Rights Conferred By The Statute

An employee has an unfettered right, under both Title VII and the FLSA, to bring a claim in federal court. Although neither statute speaks directly to the relationship between the courts and the grievance-arbitration mechanisms of collective bargaining agreements, neither does either statute contain any suggestion that "a prior arbitral decision either forecloses an individual's right to sue or divests * * * courts of jurisdiction." *Alexander* v. *Gardner-Denver Co.*, *supra*, 415 U.S. at 47. Indeed, both statutory schemes "strongly suggest" a contrary congressional intent. *Id.* at 49.

1. The fact that the FLSA vests in the courts initial, as well as ultimate, authority for enforcement of the Act clearly demonstrates Congress' intent to allow FLSA plaintiffs unrestricted access to the courts. In holding in *Alexander* v. *Gardner-Denver Co.*, *supra*, that a Title VII suit challenging racial discrimination was not barred by a prior arbitral determination of a grievance arising out of the same facts, this Court was influenced (415 U.S. at 44-45) by the fact that *final* responsibility for securing compliance with Title VII is vested in the courts. It

relied on that consideration notwithstanding its express recognition (*id.* at 44) of the roles played by the Equal Employment Opportunity Commission and state and local equal employment opportunity agencies in achieving the statutory goal of eliminating employment discrimination. That is, Title VII plaintiffs must file a timely charge with a state or local equal employment opportunity agency, where one exists, and with the EEOC, and must then proceed in court within a short period of time after receiving a statutory notice of the right to sue. 42 U.S.C. 2000e-5; see *Mohasco Corp.* v. *Silver*, No. 79-616 (June 23, 1980). The FLSA, on the other hand, permits employees who have not been paid minimum wages or overtime compensation, or the Secretary on their behalf, to recover such liability in any "court of competent jurisdiction" (29 U.S.C. 216(b), (c)), without any requirement of exhaustion.[4] The only statutory restriction on such suits is that they be brought within two years after the accrual of the cause of action (or within three years if the employer's violation is willful). 29 U.S.C. 255(a). Hence, the FLSA permits *immediate* access to the courts and imposes no procedural or other obstacles, thus indicating that an aggrieved employee has a right to judicial determination of his statutory claim.

Moreover, like Title VII (see *Alexander* v. *Gardner-Denver Co.*, *supra*, 415 U.S. at 45), the FLSA relies heavily on the employee's private right of action to play a significant role in obtaining judicial en-

---

[4] Under the Act, the courts alone are authorized to issue injunctive relief (29 U.S.C. 217), impose criminal penalties (29 U.S.C. 216(a)), and award actual damages, liquidated damages, reasonable attorney's fees and costs (29 U.S.C. 216(b), (c)).

forcement of the statutory scheme and thus vindicating the public interest.[5] Since the Act's inception in 1938, individual employees have been entitled to sue for back wages plus an equal amount as liquidated damages and to receive reasonable attorney's fees and costs. 52 Stat. 1069. Although the Secretary of Labor from the outset has had authority to seek injunctive relief under the Act (52 Stat. 1069), he had no authority to seek unpaid minimum wages or

---

[5] In *Satterwhite* v. *United Parcel Service, Inc.*, 496 F.2d 448, 452, cert. denied, 419 U.S. 1079 (1974), a case on which the court below substantially relied, the Tenth Circuit held that "when a wage dispute is submitted to arbitration in accordance with a collective-bargaining agreement, the employees may not thereafter maintain an FLSA § 16(b) suit for recovery on the basis of the same factual occurrence as that presented to the arbitrator." In the course of its opinion, the Tenth Circuit questioned (496 F.2d at 450) the significance of the private right of action afforded by the FLSA on the basis of this Court's comment in *Employees* v. *Department of Public Health & Welfare of Missouri*, 411 U.S. 279, 286 (1973), that "private enforcement of the [FLSA] was not a paramount objective * * *." That quotation, however, must be read in context. The question presented in *Employees* was whether Congress, in 1966, by merely extending the FLSA's coverage to include employees in a state-run hospital, school or similar institution, intended implicitly to remove the states' Eleventh Amendment immunity from suits in the federal courts by private citizens. The Court explained (411 U.S. at 285-286) that its negative answer to that question did not render meaningless the extension of coverage to state employees, since 29 U.S.C. 216(c) and 217 empowered the Secretary of Labor to seek to obtain restitution on behalf of individual employees and to enjoin violations of the Act. Because it was in the course of that explanation that the Court made the statement referred to in *Satterwhite*, we submit that the Court was not denigrating the importance of private FLSA actions generally, but was merely recognizing that the Act also provides meaningful alternative enforcement methods.

unpaid overtime compensation until 1949, and even then he was permitted to do so only upon an employee's request (63 Stat. 919, 920). The Secretary was not given independent authority to seek full back wages under the FLSA's injunction provision (29 U.S.C. 217) until 1961 (see 75 Stat. 74-75; S. Rep. No. 145, 87th Cong., 1st Sess. 39-41 (1961)),[6] and he was not authorized to seek liquidated damages until 1974 (88 Stat. 73). Even as the scope of the public right of action expanded, however, the employee's private right of action under 29 U.S.C. 216(b) remained an essential means of obtaining judicial enforcement of the FLSA. Cf. *Alexander* v. *Gardner-Denver Co.*, *supra*, 415 U.S. at 45.[7]

---

[6] In 1960, this Court held that the proviso to 29 U.S.C. 217 "'[t]hat no court shall have jurisdiction, in any action brought by the [Administrator] to restrain [violations of 29 U.S.C. 215], to order the payment to employees of unpaid minimum wages or unpaid overtime compensation or an additional equal amount as liquidated damages in such action'" did not prevent the Secretary from recovering *lost* wages incident to a wrongful discharge. *Mitchell* v. *DeMario Jewelry, Inc.*, 361 U.S. 288, 301 (1960).

[7] Although the *substance* of the FLSA private right of action has never been altered, when the Secretary's powers were expanded in 1961 and 1974 to permit him to sue for full back wages and liquidated damages, the time period for the filing of a private Section 216(b) action was amended in order to preclude an employee from bringing an action once the Secretary already had filed suit. 75 Stat. 74; 88 Stat. 73. The Portal-to-Portal Act of 1947, 29 U.S.C. 251 *et seq.*, also cut back somewhat on the liquidated damages remedy by providing that such damages would be awarded unless the employer "shows to the satisfaction of the court" that his violation was in "good faith" and that he had "reasonable grounds" for believing he had not violated the Act, in which case the "court may, in its sound discretion," award a lesser amount of liquidated damages or none at all. 29 U.S.C. 260. Prior to the Portal-to-Portal Act, courts had

Congress' preservation of and reliance upon the private right of action under the FLSA is explained by the sheer immensity of the enforcement problem. In 1960, this Court stated that the Act "affect[s] weekly wage dealings between vast numbers of business establishments and employees." *Mitchell* v. *DeMario Jewelry, Inc.*, 361 U.S. 288, 292 (1960). A decade later, one court of appeals remarked that "[l]ess than four percent of these [then-covered two million] establishments can be investigated [by the Secretary] each year." *Hodgson* v. *Rickey Fashions, Inc.*, 434 F.2d 1261, 1263 n.2 (5th Cir. 1970). By 1978, the Act covered nearly 52 million employees, more than 84% of the nation's private sector workforce. United States Department of Labor, *Minimum Wage and Maximum Hours Standards Under the Fair Labor Standards Act* 8 (1979). In that year, the Secretary conducted 61,239 minimum wage and overtime investigations and filed 1,955 suits alleging violations of the Act's minimum wage, overtime, recordkeeping or discriminatory discharge provisions. *Id.* at 29.

The enormous task of ensuring full compliance with the wage laws passed by Congress thus requires the assistance of individual aggrieved employees. Indeed, the fact that the FLSA has always entitled private plaintiffs to attorney's fees indicates both that Congress viewed FLSA plaintiffs as "benefiting not only themselves but also the general public as well" (*Hodgson* v. *Miller Brewing Co.*, 457 F.2d 221, 229 (7th Cir. 1972)) and that resort to the courts by aggrieved private parties is to be encouraged. See *Alexander* v. *Gardner-Denver Co.*, *supra*, 415 U.S. at 45.

---

considered themselves bound to award liquidated damages in an amount equal to the actual damages suffered. See *Overnight Transportation Co.* v. *Missel*, 316 U.S. 572 (1942); H.R. Rep. No. 71, 80th Cong., 1st Sess. 8 (1947).

2. As we have shown above, the statutory language of the FLSA makes abundantly clear that the courts possess primary and ultimate authority for enforcing the Act. There is no suggestion in the FLSA, as this Court found there was none in Title VII (*Alexander* v. *Gardner-Denver Co.*, *supra*, 415 U.S. at 47), that "a prior arbitral decision either forecloses an individual's right to sue or divests * * * courts of jurisdiction." Indeed, the contrary is the case.

The FLSA provides unequivocally for employee actions to be brought in either state or federal court (29 U.S.C. 216(b)). Moreover, the Act expressly preserves other federal and state laws establishing minimum wages or maximum hours (29 U.S.C. 218). Thus, the unmistakable implication is that the FLSA "was designed to supplement rather than supplant" existing avenues of relief. *Alexander* v. *Gardner-Denver Co.*, *supra*, 415 U.S. at 48-49.

In holding to the contrary, the court of appeals relied principally on *Satterwhite* v. *United Parcel Service, Inc.*, 496 F.2d 448 (10th Cir.), cert. denied, 419 U.S. 1079 (1974), which found in the FLSA "a greater reliance on contract remedies and a lesser emphasis on individual enforcement" (496 F.2d at 450) than in the Title VII context. The court in *Satterwhite* based this conclusion primarily on the Portal-to-Portal Act of 1947, 29 U.S.C. 251 *et seq.*, which amended the FLSA and other labor laws "to protect the right of collective bargaining and * * * limit the jurisdiction of the courts." 29 U.S.C. 251 (b).[8] But while that policy may describe the goals

[8] The court in *Satterwhite* also alluded briefly (496 F.2d at 450-451) to the provision of the Portal-to-Portal Act establishing the defense of good faith reliance on administrative regulations. 29 U.S.C. 258, 259. In an effort to distinguish

of the Portal-to-Portal Act, it has nothing to do with the issue presented in this case.

The Portal-to-Portal Act of 1947 was enacted in response to this Court's ruling in *Anderson* v. *Mt. Clemens Pottery Co.*, 328 U.S. 680, 692 (1946), that time spent by employees walking to work on the employer's premises and performing certain preliminary functions "must be included in the statutory workweek and compensated accordingly, regardless of contrary custom or contract." See H. R. Rep. No. 71, 80th Cong., 1st Sess. 2 (1947). Congress was concerned that the result in *Mt. Clemens Pottery* would impose such large and unexpected liabilities on employers as to constitute a serious "threat to the national economy" as well as to "industrial relations and to the principle of collective bargaining[, since]

---

*Gardner-Denver*, the court observed that "in certain circumstances good faith is a defense to an FLSA action. The defense, however, is not available in Title VII actions" (496 F.2d at 451). The relevance of this comparison is far from apparent. Congress' decision to afford employers a good faith defense under the FLSA says nothing about whether it intended arbitrators or the courts to exercise the ultimate authority for determining statutory liability for wage claims. Indeed, because the sole task of the arbitrator is to construe the terms of the collective bargaining agreement, rather than the statute (see pages 17-19, *infra*), the statutory defense is immaterial to the resolution of a contract dispute. In any event, even if the good faith defense under the FLSA were relevant to the question presented, the court in *Satterwhite* ignored the fact that employers under Title VII, but not under the FLSA, have available the defense of "business necessity" (see, *e.g.*, *Griggs* v. *Duke Power Co.*, 401 U.S. 424, 431 (1971)) and are exempt from liability under Title VII for employment decisions made pursuant to a bona fide seniority or merit system (42 U.S.C. 2000e-2(h)), a matter that traditionally has been an explicit subject of collective bargaining (*Teamsters* v. *United States*, 431 U.S. 324, 352 (1977)).

[i]n some cases the time now sought to be declared compensable had been the subject of collective-bargaining agreements." *Id.* at 3-4.

Thus, the Portal-to-Portal Act was intended to relieve employers from liability for time spent by an employee "traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform" and for "activities which are preliminary to or postliminary to said principal activity or activities," unless such activities were otherwise compensable pursuant to a collective bargaining agreement or a custom or practice in effect at the place of employment. 29 U.S.C. 254. While the Portal-to-Portal Act thus permits collective bargaining agreements to expand (but not to contract) the definition of time compensable under the Act, the FLSA (as amended by the Portal-to-Portal Act) does not "speak expressly to the relationship between [the] courts and the grievance-arbitration machinery of collective-bargaining agreements." *Alexander* v. *Gardner-Denver Co., supra,* 415 U.S. at 47.[9]

---

[9] Similarly, the Portal-to-Portal Act's stated policy (29 U.S.C. 251(b)) "to define and limit the jurisdiction of the courts" was "designed to meet an 'existing emergency' resulting from claims which, if allowed in accordance with *Anderson* v. *Mt. Clemens Pottery Co.*, 328 U.S. 680, would have created 'wholly unexpected liabilities, immense in amount and retroactive in operation.'" *Steiner* v. *Mitchell,* 350 U.S. 247, 253 (1956). See 29 U.S.C. 251(a). That policy, however, was effectuated by Congress' withdrawing from the courts jurisdiction over FLSA actions based on activities engaged in prior to May 14, 1947, that were not compensable under either a collective bargaining agreement or a custom or practice in effect at the place of employment (29 U.S.C. 254). See *Steiner* v. *Mitchell, supra,* 350 U.S. at 253. Once again, the amendment sheds no light on the issue presented here—whether grievance arbitrators under a collective

### B. The FLSA And Collective Bargaining Agreements Provide Legally Distinct Rights That Are Properly Enforceable In Different Forums

The crux of this Court's decision in *Alexander* v. *Gardner-Denver Co.*, *supra*, is the holding that Title VII affords nonwaivable statutory rights independent of and distinct from whatever rights may be provided by a collective bargaining agreement. As the Court recognized (415 U.S. at 52-54), arbitrators are bound by the terms of the applicable collective bargaining agreement in the event of any conflict between the agreement and federal or state law. Thus, in order to permit the merits of a Title VII claim to be considered in the manner provided by Congress, the Court held that submission to arbitration of a claim under the nondiscrimination clause of a collective bargaining agreement does not foreclose a subsequent Title VII action in the courts. Because this analysis applies with equal force to claims under the FLSA, ABF's election of remedies defense to disputed statutory wage claims should similarly be rejected.

1. First, as the Court emphasized in *Gardner-Denver*, arbitration and litigation are wholly separate means of vindicating distinctly independent rights (415 U.S. at 49-50):

> In submitting his grievance to arbitration, an employee seeks to vindicate his contractual right under a collective-bargaining agreement. By contrast, in filing a lawsuit under Title VII, an employee asserts independent statutory rights accorded by Congress. The distinctly separate nature of these contractual and statutory rights is not vitiated merely because both were violated as a result of the same factual occurrence. And certainly no inconsistency results from permit-

---

bargaining agreement or the courts are to resolve FLSA claims based on *post*-May 14, 1947 activities.

ting both rights to be enforced in their respectively appropriate forums.

By the same token, an employee's rights under the FLSA to receive the specified minimum wage for all hours worked and a premium rate for all overtime hours (29 U.S.C. 206, 207) are rights accorded by Congress independent of and separate from whatever other rights or benefits may be provided by a collective bargaining agreement. See *Steiner* v. *Mitchell*, 350 U.S. 247, 255-256 (1956); *Jewell Ridge Coal Corp.* v. *Local No. 6167*, 325 U.S. 161, 167 (1945); *Tennessee Coal, Iron & R.R.* v. *Muscoda Local No. 123*, 321 U.S. 590, 602-603 (1944).

Moreover, like rights under Title VII (*Alexander* v. *Gardner-Denver Co.*, *supra*, 415 U.S. at 51-52), the FLSA right to back wages cannot be waived except as part of a voluntary settlement of a bona fide dispute between employer and employee. *Brooklyn Savings Bank* v. *O'Neil*, 324 U.S. 697, 707 (1945). Just as a waiver of an employee's statutory right to be free from discriminatory employment practices "would defeat the paramount congressional purpose behind Title VII," *Alexander* v. *Gardner-Denver Co.*, *supra*, 415 U.S. at 51, a waiver by an employee of his statutory wage rights "would nullify the purposes of the [FLSA]." *Brooklyn Savings Bank* v. *O'Neil*, *supra*, 324 U.S. at 707. The mere submission of a contractual wage claim to arbitration under the provisions of a collective bargaining agreement thus cannot be construed to bar an employee from subsequently instituting an FLSA action to pursue his statutory claim based on the same facts. See *Alexander* v. *Gardner-Denver Co.*, *supra*, 415 U.S. at 52.

In addition, as the Court observed in *Alexander* v. *Gardner-Denver Co.*, *supra*, 415 U.S. at 53, it is not the function of an arbitrator to protect rights guar-

anteed by statute. An arbitrator's power is derived completely from the collective bargaining agreement, and his task is limited to construing that agreement so as to effectuate the intent of the parties. This narrow responsibility does not include investigation into or vindication of statutory rights, nor does it include consideration of the public interest. Indeed, "[i]f an arbitral decision is based 'solely upon the arbitrator's view of the requirements of enacted legislation,' rather than on an interpretation of the collective-bargaining agreement, the arbitrator has 'exceeded the scope of the submission,' and the award will not be enforced." *Ibid.*, quoting *United Steelworkers of America* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960). An arbitrator thus need not be concerned with the legality under the FLSA of a challenged pay practice, but only with its consistency with the provisions of the collective bargaining agreement. So long as the pay practice comports with that agreement, it must be upheld by the arbitrator.

Under the decision of the court of appeals, the ruling of a grievance committee that applied only the terms of the collective bargaining agreement, that did not purport to resolve the FLSA claim and to which the FLSA claim was not even submitted would preclude later judicial review of the merits of an employee's statutory claim.[10] Because an arbitrator

---

[10] In its brief in opposition to the petition for a writ of certiorari, ABF asserted (Br. in Opp. 3-4, 5, 16) that petitioners did, in fact, submit their FLSA claims to the grievance committee. Neither court below held that the FLSA claims had been before the grievance committee, and the record fails to substantiate ABF's assertion. The grievances submitted to the committee and the committee reports thereon (J.A. 19-21, 22; R. 81, 95) do not even mention the statu-

is not obliged to enforce federal law, and because (under the court of appeals' holding) a court is powerless to do so after a wage claim has been submitted to arbitration, the result is that, as the present case illustrates, an apparent violation of the FLSA may remain uncorrected.[11] A collective bargaining agreement's condonation of an employer's practice of undercompensating employees thus will have been permitted to shield the employer from liability under the Act, in contravention of congressional intent and this Court's decisions in *Tennessee Coal* (321 U.S. at 602-603) and *Jewell Ridge Coal Corp.* (325 U.S. at 167).

---

tory claims. The only mention of federal law in the entire record of the grievance proceeding is the statement in petitioner Barrentine's "member grievance report" (J.A. 21) that "Federal Wage Laws also state that this is compensable time." No statute or judicial decision is cited in the report, however, and this oblique reference cannot reasonably be construed as a submission of the FLSA claim to arbitration. The more likely explanation is that petitioners sought merely to convince the grievance committee to construe the collective bargaining agreement so as not to conflict with applicable wage statutes. In sum, as Judge Heaney stated in dissent (Pet. App. 31a), "there was no intent to submit the FLSA claim to arbitration and it was not submitted to arbitration."

[11] Although the grievance committee found that the collective bargaining agreement did not cover the time spent by employees checking their vehicles for violations of safety regulations and driving them to the repair facility, there can be little doubt that the time is compensable under the FLSA, since those activities are an "integral and indispensable" part of the employees' primary activity of driving ABF's trucks. See, *e.g.*, *Steiner* v. *Mitchell*, 350 U.S. 247, 256 (1956); *Dunlop* v. *City Electric, Inc.*, 527 F.2d 394 (5th Cir. 1976); *Mitchell* v. *Mitchell Truck Line, Inc.*, 286 F.2d 721, 725 (5th Cir. 1961); *Mitchell* v. *Stewart Brothers Construction Co.*, 184 F. Supp. 886, 895 (D. Neb. 1960).

2. This Court made clear in *Alexander* v. *Gardner-Denver Co., supra,* that, even where statutory and contractual causes of action arise out of the same underlying substantive right, they nonetheless are entitled to separate and independent consideration. 415 U.S. at 57-58. This rule is not affected by the observation of the court of appeals in *Satterwhite* (496 F.2d at 451) that wages and hours are the subject of collective bargaining as well as of the FLSA and that many collective bargaining agreements define as contract rights the same rights granted by the federal statute.

Both Title VII and the collective bargaining agreement in *Gardner-Denver* provided that " 'there shall be no discrimination against any employee on account of race, color, religion, sex, [or] national origin * * *' " (see 415 U.S. at 39; 42 U.S.C. 2000e-2). Nevertheless, this Court held that arbitration of the contractual claim neither foreclosed judicial consideration of the statutory claim nor required the courts to defer to the arbitral decision, since " 'the choice of forums inevitably affects the scope of the substantive right to be vindicated.' " *Alexander* v. *Gardner-Denver Co., supra,* 415 U.S. at 56, quoting *U.S. Bulk Carriers* v. *Arguelles,* 400 U.S. 351, 359-360 (1971) (Harlan, J., concurring). This conclusion applies equally in the FLSA context. Indeed, when the proposed FLSA was under consideration, a management spokesman advocated a revision to provide for enforcement of the statute through grievance procedures. *Fair Labor Standards Act of 1937: Joint Hearings on S. 2475 and H.R. 7200 Before the Senate Comm. on Education and Labor and the House Comm. on Labor,* 75th Cong., 1st Sess. 694-695 (1937). Congress never adopted this change, however, choosing instead to place enforcement powers exclusively in the courts.

The Court in *Gardner-Denver* found "arbitral processes comparatively inferior to judicial processes

in the protection of Title VII rights" even "where a collective-bargaining agreement contains provisions facially similar to Title VII," principally because "the specialized competence of arbitrators pertains primarily to the law of the shop, not the law of the land" (415 U.S. at 57). The Court also remarked (*ibid.*) that, in dealing with claims of employment discrimination, "judicial construction has proved especially necessary with respect to Title VII, whose broad language frequently can be given meaning only by reference to public law concepts."

The identical concerns arise when claims are brought under the FLSA. Contrary to the court's statement in *Satterwhite* that collective bargaining agreements and the FLSA are both "concerned with rate of pay, an issue which does not require, or lend itself to, public law considerations" (496 F.2d at 451), the goal of the federal statute, unlike a collective bargaining agreement, is not simply the adjustment of the working relationship between particular employees and their employer. For example, Congress' purpose in enacting the maximum hours provision of the FLSA, 29 U.S.C. 207, was "to spread employment by placing financial pressure on the employer through the overtime pay requirement" as well as "to compensate employees for the burden of a workweek in excess of the hours fixed in the Act." *Walling* v. *Helmerich & Payne*, 323 U.S. 37, 40 (1944). Accord, *Overnight Motor Transportation Co.* v. *Missel*, 316 U.S. 572, 576-578 (1942).

In addition, the legal issues arising under the FLSA, like those arising under Title VII, are complex, technical and not answerable merely by reference to "the law of the shop." FLSA claims require statutory interpretation, frequently including resort to legislative history, four decades of judicial deci-

sions construing the Act, and administrative rulings.[12] Arbitrators are without special competence or experience in performing these tasks.

Furthermore, the grievance-arbitration process is not designed to ensure the kind of careful fact-finding appropriate where important rights are at issue. As the Court pointed out in *Gardner-Denver* (415 U.S. at 57-58):

> The record of the arbitration proceedings is not as complete; the usual rules of evidence do not apply; and rights and procedures common to civil trials, such as discovery, compulsory process, cross-examination, and testimony under oath, are often severely limited or unavailable.

The process is basically an informal one in which "[a]rbitrators * * * need not give their reasons for their results [and] the record of their proceedings is not as complete as it is in a court trial * * *." *Bernhardt* v. *Polygraphic Co.*, 350 U.S. 198, 203 (1956). See also *United Steelworkers of America* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593, 598 (1960).

This problem is compounded by the very limited scope of judicial review of arbitration awards. See, *e.g.*, Jalet, *Judicial Review of Arbitration: The Judicial Attitude*, 45 Cornell L.Q. 519, 532-542 (1960); Note, *Judicial Review of Arbitration Awards on the Merits*, 63 Harv. L. Rev. 681 (1950). This limited scope is appropriate, at least in part, because arbitrators merely interpret and apply the disparate provisions of privately-adopted agreements. But Congress has, in the FLSA, created nationwide rights and provided methods for their enforcement intended

---

[12] Indeed, with respect to petitioners' claim in the present case, there is a long line of court decisions bearing on whether the time in question is compensable under the Act. See note 11, *supra*.

to assure that they will be judicially defined and uniformly applied.

Moreover, even where the FLSA and a collective bargaining agreement guarantee the same substantive right, the remedies provided for the violation of that right typically will not be co-extensive. Under the FLSA, an employee who has not been paid minimum wages or overtime compensation is entitled to recover such liability plus an equal amount as liquidated damages, unless the employer shows "to the satisfaction of the Court" that his violation was in "good faith" and that he had "reasonable grounds" for believing he had not violated the Act (in which case, the "court may, in its sound discretion," award a lesser amount of liquidated damages or none at all). 29 U.S.C. 216(b), 260. In addition, the court may award attorney's fees and costs. 29 U.S.C. 216(b). It would be the rare collective bargaining agreement that provided equally beneficial remedies to an employee who successfully pursued a wage claim against his employer.

In most cases there also is a substantial discrepancy between the time period for bringing an action under the FLSA and the one for instituting a grievance under a collective bargaining agreement. The FLSA provides that an employee must commence suit thereunder within two years after the accrual of the cause of action (or three years if the employer's violation is willful). 29 U.S.C. 255(a). The typical collective bargaining agreement provides for a significantly shorter limitations period, usually as short as from two days to two months. See Feller, *A General Theory of the Collective Bargaining Agreement*, 61 Calif. L. Rev. 663, 752 (1973). Hence, if the court of appeals' decision is allowed to stand, an employee who files a grievance relating to wages under the time pressure imposed by his employment contract

may find that he has waived his right to pursue his statutory remedies.

Finally, the concern this Court expressed in *Gardner-Denver* with regard to "the union's exclusive control over the manner and extent to which an individual grievance is presented" (415 U.S. at 58 n.19) is equally troubling in the FLSA context. The Court specifically noted (*ibid.*) that "harmony of interest between the union and the individual employee cannot always be presumed, especially where a claim of racial discrimination is made." In the wage area, too, a union might be willing to sacrifice benefits for one class of employees in an effort to obtain additional compensation elsewhere. The union's collective objective to maximize employee pay hardly signals its interest in any individual case. See Azoff, *Joint Committees as an Alternative Form of Arbitration Under the NLRA*, 47 Tul. L. Rev. 325, 329 (1973). It was for this reason that Congress has steadfastly required that the individual employee, rather than his union, control the processing of the statutory claim. Thus, in 1947, Congress deleted from 29 U.S.C. 216 (b) the provision that had allowed "employees [to] designate an agent or representative to maintain" an action in their behalf. See 52 Stat. 1069; S. Rep. No. 48, 80th Cong., 1st Sess. 49 (1947). And, as noted above (see page 20, *supra*), Congress in 1937 refused to adopt a management proposal that would have provided for enforcement of the FLSA through grievance procedures, which would have been controlled by the union.[13]

---

[13] In part because the union, rather than the individual employee, is responsible for processing a grievance under a collective bargaining agreement, even the express submission of the statutory claim to an arbitrator might not foreclose the employee from pursuing his FLSA rights in court.

In sum, the features of the "arbitral procedure that enable[] it to function as an efficient, inexpensive, and expeditious means for dispute resolution" (415 U.S. at 58) render it a less appropriate forum than the courts for the resolution of statutory claims. Unless an FLSA claim may be brought in court subsequent to an arbitral determination of a contractual wage claim, the statute would afford employees little more than that to which they already are entitled under their collective bargaining agreements.

### C. Permitting Judicial Trials De Novo On FLSA Claims Would Not Diminish The Federal Policy Favoring Arbitration Of Labor Disputes

Relying solely on the Tenth Circuit's opinion in *Satterwhite*, the court of appeals distinguished this Court's holding in *Gardner-Denver* on the ground (Pet. App. 25a) that "the right of an employee to be free from [racial] discrimination may well be thought to stand in more need of protection than conventional arbitration of a simple wage dispute may provide." The *Satterwhite* court, in turn, had perceived (496 F.2d at 450) a need to compare the policies behind the wage and hour provisions of the FLSA with those underlying the anti-discrimination provisions of Title VII, in order to determine whether the former outweighed the federal policy favoring arbitration of labor disputes.[14] As discussed

---

See *Alexander* v. *Gardner-Denver Co.*, *supra*, 415 U.S. at 60 n.21. Because petitioners' FLSA claim plainly was not submitted to the grievance committee in this case (see note 10, *supra*), the Court need not address this question.

[14] See *United Steelworkers of America* v. *American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers of America* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers of America* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960); *Textile Workers Union of America* v. *Lincoln Mills*, 353 U.S. 448 (1957).

above, that court concluded that they did not (496 F.2d at 452). Thus, both the *Satterwhite* court and the court of appeals in this case essentially held that claims of racial discrimination are more important than "simple wage claims" and that, therefore, while the former may take precedence over the federal interest in resolving labor disputes through arbitration, the latter do not.

The court of appeals' analysis is erroneous for a number of reasons. First, the provisions of the FLSA, like those of Title VII, are rooted in strong public policy. The statute was enacted to eliminate those "labor conditions detrimental to a minimum standard of living required for the general well-being of workers" by paying a minimum wage and a premium rate for overtime work, so that employees would receive " '[a] fair day's pay for a fair day's work' " and would be protected from "the evil of 'overwork' as well as 'underpay'." *Overnight Motor Co.* v. *Missel*, 316 U.S. 572, 576, 578 (1942). See also *Mitchell* v. *DeMario Jewelry, Inc.*, *supra*, 361 U.S. at 292; *Brooklyn Savings Bank* v. *O'Neil*, *supra*, 324 U.S. at 706-707. Accordingly, its provisions, like those of Title VII, should be construed to accomplish the Act's compelling purposes.

But more important, as we have shown above (see pages 16-25, *supra*), this Court's decision in *Gardner-Denver* did not depend on the nature or importance of a particular claim, but rather on the independent and distinct nature of statutory and contractual rights. Indeed, contrary to the court of appeals' apparent assumption (Pet. App. 25a), this Court's holding in *Gardner-Denver* presumably encompasses *all* Title VII claims, regardless of whether the alleged discrimination is based on race, color, religion, sex or national origin.

In any event, the importance of the policies underlying the FLSA and Title VII need not be compared, because the federal policy in favor of resolving labor disputes by arbitration is in no way diminished by permitting statutory claims to be brought in court after contractual claims based on the same events have been submitted to arbitration. In *Gardner-Denver*, this Court rejected the contention that "to permit a later resort to the judicial forum would undermine substantially the employer's incentive to arbitrate and would 'sound the death knell for arbitration clauses in labor contracts' " (415 U.S. at 54). Rather, the Court observed that since the *quid pro quo* for an arbitration clause is the union's promise not to strike, and since the grievance-arbitration machinery of the collective bargaining agreement is a relatively inexpensive and expeditious means for resolving disputes and thereby avoiding resort to the more costly and time-consuming judicial forum, arbitration would continue to remain attractive to both employers and employees. *Id.* at 54-55.

Indeed, the result below may *undermine* the policy favoring arbitration of labor disputes. If employees were required to elect between the arbitral and judicial forums, as the court of appeals' decision would force them to do, individuals who believed that their contractual remedies are inadequate or that surer relief might be available under the FLSA would be likely to bypass the grievance procedure. Thus, "the result could well be more litigation, not less" (*Alexander* v. *Gardner-Denver Co.*, *supra*, 415 U.S. at 59), at the expense of the important public policy favoring private settlement of labor disputes. On the other hand, some employees might choose the speed and expense of the arbitral remedy and (either intentionally or not) would then be required to forego judicial en-

forcement of their statutory rights. Neither contract rights nor statutory rights would be fully vindicated by such a haphazard policy: valid contract claims would in some instances be suppressed in the interest of statutory adjudication, whereas in other cases legitimate FLSA claims would be sacrificed in order to obtain prompt settlement of a contract dispute. Either result would conflict with the Court's statement in *Gardner-Denver* (415 U.S. at 52) that "a contractual right to submit a claim to arbitration is not displaced simply because Congress also has provided a statutory right" to relief.

In sum, we submit that the conclusion reached by this Court in *Alexander* v. *Gardner-Denver Co., supra,* 415 U.S. at 59-60, in the context of Title VII controls this case as well: the federal policy favoring arbitration of labor disputes and the federal wages and hours policy represented by the FLSA can best be accommodated by permitting an employee to pursue fully both his remedy under the grievance-arbitration clause of a collective bargaining agreement and his cause of action under the statute.[15]

---

[15] An employee, of course, may not obtain a duplicative recovery by pursuing both his arbitral and judicial remedies. See *Alexander* v. *Gardner-Denver Co., supra,* 415 U.S. at 51 n.14.

## CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

WADE H. MCCREE, JR.
*Solicitor General*

KENNETH S. GELLER
*Deputy Solicitor General*

BARBARA E. ETKIND
*Assistant to the Solicitor General*

CARIN ANN CLAUSS
*Solicitor of Labor*

DONALD S. SHIRE
*Associate Solicitor*

LOIS G. WILLIAMS
*Deputy Associate Solicitor*

MARY-HELEN MAUTNER
MARY ANN BERNARD
*Attorneys*
*Department of Labor*

NOVEMBER 1980

☆ U. S. GOVERNMENT PRINTING OFFICE: 1980 333585 167